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7
 8 **UNITED STATES BANKRUPTCY COURT**
 9 **DISTRICT OF NEVADA**

10 In re

11 DOG BLUE PROPERTIES, LLC

12 Debtor.

Case No.: BK-19-50104-btb
Chapter 11

Proposed Joint Administration with:

19-50102-btb	Double Jump, Inc. (Lead)
19-50103-btb	Dora Dog Properties, LLC
19-50105-btb	Brandy Boy Properties, LLC
19-50106-btb	475 Channel Road, LLC
19-50108-btb	Park Road, LLC
19-50109-btb	140 Mason Circle, LLC
19-50130-btb	DC Solar Solutions, Inc.
19-50131-btb	DC Solar Distribution, Inc.

17 **DEBTORS' EMERGENCY MOTION FOR**
 18 **ENTRY OF ORDER (I) PROHIBITING**
 19 **UTILITY COMPANIES FROM**
 20 **ALTERING, REFUSING, OR**
 21 **DISCONTINUING SERVICE AND (II)**
 22 **ESTABLISHING PROCEDURES FOR**
 23 **DETERMINING REQUESTS FOR**
 24 **ADDITIONAL ADEQUATE ASSURANCE**
 25 **OF PAYMENT**

Hearing Date: OST Requested
 Hearing Time: OST Requested

24 Double Jump, Inc. ("Double Jump" or "Holdings") and certain of its affiliates, the debtors
 25 and debtors in possession in the above-captioned cases (collectively, the "Debtors"), hereby move
 26 (this "Motion") this Court for entry of an order under sections 105, 366, 1107, and 1108 of title 11
 27 of the United States Code (the "Bankruptcy Code") and Rules 6003 and 6004 of the Federal Rules
 28

of Bankruptcy Procedure (the “Bankruptcy Rules”), substantially in the form attached hereto as Exhibit 1, (i) prohibiting utility companies from altering, refusing, or discontinuing service to the Debtors and (ii) establishing procedures for determining requests for additional adequate assurance of payment. In support of the Motion, the Debtors rely upon and incorporate by reference the *Omnibus Declaration of Seth R. Freeman in Support of First Day Motions* [ECF No. 12] (the “First Day Declaration”), filed with the Court concurrently herewith.

Respectfully submitted this 4th day of February, 2019.

CLARK HILL PLC

/s/ Tracy M. O’Steen, Esq.

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[Proposed] Counsel for Debtors and Debtors in Possession

MEMORANDUM OF POINTS AND AUTHORITIES

I.

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for relief requested herein are sections 105, 366, 1107, and 1108 of the Bankruptcy Code.

3. Pursuant to Rule 9014.2 of the Local Rules for the United States Bankruptcy Court for the District of Nevada (the “Local Bankruptcy Rules”), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that this Court would lack Article III jurisdiction to enter such final order or judgment absent the consent of the parties.

II.

BACKGROUND

4. On January 30, 2019 (the “Petition Date”), Holdings and the Real Estate Debtors (as defined below) each commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code, and on February 3, 2019, DC Solar Solutions, Inc. and DC Solar Distribution, Inc. each commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code (collectively, the “Chapter 11 Cases”). The Debtors have requested that the Chapter 11 Cases be jointly administered.

5. The Debtors continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. To date, no creditors’ committee has been appointed in these Chapter 11 Cases by the Office of the United States Trustee for the District of Nevada (the “United States Trustee”). No trustee or examiner has been appointed in the Debtors’ Chapter 11 Cases.

7. DC Solar Solutions, Inc., DC Solar Distribution, Inc., and DC Solar Freedom, Inc. (together, the “DC Solar” companies or the “Company”) DC Solar has become the largest manufacturer of mobile solar generators over the last decade. The Company designs, manufactures, and distributes mobile solar generators, mobile solar electric vehicle chargers, mobile solar light towers, and mobile solar power stations to private enterprises, municipalities, and universities. The Company was founded in 2009, and today has deployed its units across the United States.

8. In addition to DC Solar Solutions, Inc. and DC Solar Distribution, Inc., the Debtors are comprised of Double Jump, which holds 100% of the stock in Solutions and Distribution, as well as six limited-liability companies which primarily hold real estate assets (both commercial and residential) for rent or lease, being Dog Blue Properties, LLC, Dora Dog Properties, LLC, Brandy Boy Properties, LLC, 475 Channel Road, LLC, 140 Mason Circle LLC, and Park Road LLC (the “Real Estate Debtors”). The assets of the Real Estate Debtors will be pledged as collateral in connection with the proposed DIP Financing described in the First Day Declaration.

9. As set forth in the First Day Declaration, on December 18, 2018, the federal government seized funds from and froze all bank accounts associated with the DC Solar companies,

1 allegedly in connection with a purported “investment fraud” perpetrated by the Company. On the
2 same day, agents from the FBI and the IRS executed sweeping search and/or seizure warrants of the
3 DC Solar business headquarters located in Benicia, California. Agents seized hundreds of items
4 essential for the Company to conduct and operate its ongoing businesses, including, but not limited
5 to, computer servers, computers, and hard copy files containing corporate books and records,
6 investment agreements, lease agreements, vendor agreements, communications with investors and
7 customers, and invoices for insurance and utility providers. Left without any liquid assets to fund
8 the Company’s business or basic communications and record-keeping infrastructure, the Company
9 was forced to shut down and lay off its entire workforce the week before Christmas.
10 Approximately 100 employees were laid off, and the Company was unable to pay wages owed to
11 those employees. Following the seizure, the Company has continued to receive strong support from
12 its employees, its customers, its partners, and its investors. Buoyed by the support of its key
13 constituencies, the Company is securing debtor-in-possession financing and commenced these
14 Chapter 11 Cases in order to reopen its business operations so that it may continue to serve its
15 customers and other stakeholders, compensate its employees, and continue to deliver and develop
16 its best-in-class products and services for the benefit of all constituencies.

17 10. In order to alleviate any concerns with regard to prior management, the Debtors
18 have engaged an experienced independent restructuring advisor, Seth Freeman of GlassRatner, to
19 act as the Corporate Restructuring Officer and lead the Debtors through the reorganization process.
20 DC Solar companies and Double Jump, Inc. have also engaged new independent directors to aid
21 with the reorganization process.

22 11. Additional factual background information regarding the Debtors, including their
23 business operations, their corporate and capital structure, and the events leading to these Chapter 11
24 Cases, is set forth in detail in the First Day Declaration.

25 III.

26 **RELIEF REQUESTED**

27 12. The Debtors respectfully request entry of an order (i) prohibiting utility service
28 providers, including those listed on Schedule 1 attached hereto (the “Utilities”), from altering,

1 refusing, or discontinuing services on account of the commencement of this Chapter 11 case or any
2 unpaid pre-petition invoices or pre-petition claims and (ii) establishing procedures for determining
3 requests for additional adequate assurance of payment.

4 13. In addition, the Debtors request entry of orders (a) authorizing all applicable banks
5 and other financial institutions (collectively, the “Banks”), when requested by the Debtors in their
6 sole discretion, to receive, process, honor, and pay any and all checks, drafts, and other forms of
7 payment, including fund transfers, on account of the electricity, telephone, internet and technology,
8 water, and similar utility products and services the Debtors receive from the Utilities (the “Utility
9 Services” giving rise to “Utility Obligations”), whether such checks or other requests were
10 submitted before, on, or after the Petition Date; (b) authorizing the Banks to rely on the
11 representations of the Debtors as to which checks are subject to this Motion, provided that any such
12 Bank shall not have any liability to any party for relying on such direction and representations by
13 the Debtors; (c) providing that the Banks shall, at the direction of the Debtors, receive, process,
14 honor, and pay all prepetition and post-petition checks and fund transfers on account of the Utility
15 Obligations that had not been honored and paid as of the Petition Date, provided that sufficient
16 funds are on deposit in the applicable accounts to cover such payments and that any such Bank shall
17 not have any liability to any party for relying on such direction by the Debtors; and (d) authorizing
18 the Debtors to issue new post-petition checks or effect new post-petition fund transfers to replace
19 any checks, drafts and other forms of payment which may be inadvertently dishonored or rejected.

20 14. To provide adequate assurance of payment for future service to the Utilities, the
21 Debtors propose the following procedures (the “Procedures”) for determining the appropriate
22 adequate assurance of payment:

23 a. The Utility must serve a written request setting forth the location(s) for
24 which utility services are provided, the account number(s) for such location(s), the outstanding
25 balance for each account, and an explanation of why adequate assurance of payment is necessary (a
26 “Request”);

27 b. The Request must actually be received by the Debtors’ counsel, Clark Hill
28 PLC, 3800 Howard Hughes Parkway, Suite 500, Las Vegas, NV 89169 (Attn: Candace C. Carlyon),

1 within thirty (30) days of the date of entry of the order granting the relief requested herein (the
2 “Request Deadline”);

3 c. Without further order of the Court, the Debtors may enter into agreements
4 granting additional adequate assurances to a Utility serving a timely Request, if the Debtors, in their
5 discretion, determines that the Request is reasonable;

6 d. If the Debtors believe that a Request is unreasonable, the Debtors, within
7 thirty (30) days after the Request Deadline, shall file a motion pursuant to section 366(c)(2) of the
8 Bankruptcy Code (a “Determination Motion”), seeking determination from the Court that the
9 additional consideration offered by the Debtors constitutes adequate assurance of payment. Pending
10 notice and hearing on the Determination Motion, the Utility that is the subject of the Request may
11 not alter, refuse, or discontinue services to the Debtors, request an additional deposit or other
12 security, nor recover or setoff against a pre-Petition Date deposit;

13 e. Any Utility that makes a timely Request shall be deemed to have adequate
14 assurance of payment until the Court enters a final order in connection with such a Request finding
15 that the Utility is not adequately assured of future payment, or until the Debtor and such Utility
16 otherwise resolve consensually such request for additional adequate assurance of payment; and

17 f. Any Utility that fails to make a timely Request shall be deemed to be
18 satisfied of adequate assurance of payment.

19 15. The relief requested herein should not (a) be construed as a request to assume, or
20 for authority to assume, any executory contract under section 365 of the Bankruptcy Code or
21 otherwise, (b) waive, affect, or impair any of the Debtors’ rights, claims, or defenses, including, but
22 not limited to, those arising from section 365 of the Bankruptcy Code, other applicable law, or any
23 agreement, (c) grant third-party beneficiary status or bestow any additional rights on any third
24 party, (d) be otherwise enforceable by any third party other than the Banks, or (e) impair the
25 Debtors’ ability to contest or object to any claims asserted against the Debtors on any ground
26 permitted by applicable law.

IV.

BASIS FOR RELIEF

16. Uninterrupted utility services are critical to the Debtors' ability to sustain their property and continue business operations during the pendency of the Chapter 11 Cases. In the normal conduct of their businesses, the Debtors rely upon access to internet, electric, telephone, data, and other services provided by the Utilities.

17. Permitting even one of the Utilities to terminate services to the Debtors, even briefly, could cause severe disruptions in the Debtors' operations. As a result, the relief requested in this Motion is critical and should be approved as soon as possible.

18. Although the Debtors anticipate that, once they resume operations, the cash flow from its ongoing business operations as well as proceeds from the DIP Facility will be sufficient to satisfy all administrative expenses, including post-petition utility bills, on a current and ongoing basis, the Debtors recognize that certain Utilities may not be satisfied without further assurances.

19. The proposed Procedures outlined above provide a fair, reasonable, and orderly mechanism for the Utilities to seek additional adequate assurance, while temporarily maintaining the status quo for the Debtors and for the benefit of all stakeholders.

20. The Debtors also propose to serve a copy of the order on all Utilities listed on Schedule 1, attached hereto, and, if additional Utilities are subsequently identified, on such subsequently identified Utilities. The Debtors also propose that any Utility not currently listed on Schedule 1, but subsequently identified and served by the Debtors with a copy of the order, be afforded thirty (30) days from the date of such service to make a Request, if any, to the Debtors for additional adequate assurance of payment. Concurrently with such service, the Debtors will file with the Court a supplement to Schedule 1 adding the name of any Utilities so served. Such notice and opportunity to request further assurances is sufficient under the Bankruptcy Code.

V.

APPLICABLE AUTHORITY

21. Section 366 of the Bankruptcy Code protects a debtor against immediate termination of utility services after commencing its case. Pursuant to section 366(c), a utility

1 company may alter, refuse, or discontinue utility service if within 30 days after commencement of
2 the Chapter 11 case, the utility company does not receive adequate assurance in a form
3 “satisfactory” to the utility company. This process is subject to the Court’s ability to modify the
4 amount of adequate assurance of payment and the Court’s exclusive jurisdiction to decide what
5 constitutes adequate assurance.

6 22. The requirement that a utility receive adequate assurance of payment, however,
7 does not require a guarantee of payment. Rather, it is intended to avoid exposing the utility to an
8 unreasonable risk of nonpayment. In In re Adelphia Business Solutions, Inc., 280 B.R. 63 (Bankr.
9 S.D.N.Y. 2002), the Bankruptcy Court for the Southern District of New York stated that “[i]n
10 determining adequate assurance, a bankruptcy court is not required to give a utility company the
11 equivalent of a guaranty of payment, but must only determine that the utility is not subject to an
12 unreasonable risk of nonpayment for post-petition services.” Id. at 80. The essence of the Court’s
13 inquiry is an “examination of the totality of the circumstances [in making] an informed judgment as
14 to whether . . . utilities [will] be subject to an unreasonable risk” of nonpayment. Id. at 82-83.

15 23. The Debtors seek to mitigate the Utilities’ risk of non-payment, while maintaining
16 adequate capital to operate their business during this Chapter 11 by establishing the Procedures.
17 Under the circumstances of this case, the establishment of the Procedures and compliance therewith
18 constitutes adequate assurance of payment within the meaning of section 366(c) of the Bankruptcy
19 Code. The Debtors propose to protect the Utilities further by establishing a reasonable procedure
20 for them to request additional adequate assurance of payment. Separate negotiations with each of
21 the Utilities would be time-consuming and would unnecessarily divert the Debtors from other
22 critical tasks related to the operation of their businesses. If the Debtors fail to reach an early
23 agreement with each Utility, they would then have to file motions seeking expedited
24 determinations as to adequate assurance or risk service termination.

25 24. The proposed Procedures, therefore, preserve the status quo and ensure continued
26 utility services, while providing a prompt forum and methodology for the resolution of any dispute
27 as to adequate assurance. Section 105(a) of the Bankruptcy Code authorizes the Bankruptcy Court
28 to enter “any order . . . that is necessary or appropriate to carry out the provisions of this title.” 11

1 U.S.C. § 105(a). Because the proposed Procedures protect the Debtor without materially
 2 prejudicing the Utilities, they carry out the provisions of section 366 and therefore are appropriate
 3 under section 105(a).

4 25. Similar relief has routinely been granted in other Chapter 11 reorganization cases in
 5 this district. See, e.g., In re Bachi Burger, L.L.C., Case No. 18-16585 (ABL) (Bankr. D. Nev. Nov.
 6 20, 2018); In re Lucky Dragon Hotel & Casino, LLC, Case No. 18-10792 (LED) (Bankr. D. Nev.
 7 Apr. 2, 2018); In re Diagnostic Center of Medicine (Allen), LLP, Case No. 18-10152 (LED)
 8 (Bankr. D. Nev. Jan 25, 2018); In re Regal Property Holdings, Inc., Case No. 13-13969 (BTB)
 9 (Bankr. D. Nev. May 21, 2013); In re Zen Entertainment, Inc., Case No. 13-10589 (BTB) (Bankr.
 10 D. Nev. February 4, 2013); In re Prestige Travel, Inc., Case No. 12-21951-BAM (Bankr. D. Nev.
 11 November 6, 2012); In re S2 Art Group, Ltd., Case No. 12-20252 (BAM) (Bankr. D. Nev. Oct. 3,
 12 2012).

13 VI.

14 **IMMEDIATE AND UNSTAYED RELIEF IS NECESSARY TO AVOID IMMEDIATE AND IRREPARABLE** 15 **HARM**

16 26. The Court may grant the relief requested in this Motion immediately if the “relief is
 17 necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003; see also In re First
 18 NLC Fin. Servs., LLC, 382 B.R. 547, 549 (Bankr. S.D. Fla. 2008) (holding that Rule 6003 permits
 19 entry of retention orders on an interim basis to avoid irreparable harm). The Ninth Circuit has
 20 interpreted the language of “immediate and irreparable harm” in the context of injunctive relief. In
 21 that context, the court has instructed that irreparable harm is a continuing harm for which there is no
 22 adequate legal remedy. See, e.g., Ariz. Dream Act Coal. v. Brewer, 757 F.3d 1053, 1068 (9th Cir.
 23 2014). Furthermore, the harm must be shown to be actual and imminent, not speculative or
 24 unsubstantiated. See, e.g., Boardman v. Pacific Seafood Group, 822 F.3d 1011, 1019 (9th Cir.
 25 2016). The Debtors submit that for the reasons already set forth herein, the relief requested in this
 26 Motion is necessary to avoid immediate and irreparable harm to the Debtors.
 27
 28

VII.

WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(H)

27. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate without interruption and to preserve value for their estates. Accordingly, the Debtors respectfully request that the Court waive the fourteen day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

VIII.

RESERVATION OF RIGHTS

28. Nothing contained herein is or should be construed as: (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors’ rights to dispute any claim on any grounds; (c) a promise to pay any claim; (d) an assumption or rejection of any executory contract or unexpired lease pursuant to Bankruptcy Code section 365; or (e) otherwise affect the Debtors’ rights under Bankruptcy Code section 365 to assume or reject any executory contract with any party subject to this Motion.

IX

NOTICE

29. Notice of this Motion shall be given to (a) the Office of the United States Trustee for the District of Nevada; (b) the parties listed in the list of twenty (20) largest unsecured creditors filed by each the Debtors in these Chapter 11 Cases; (c) the United States Attorney for the Eastern District of California, Attn: McGregor W. Scott; (d) all Utilities listed on Schedule 1 attached hereto; and (e) any such other party entitled to notice pursuant to Bankruptcy Rule 2002. The Debtors submit that no other or further notice need be provided.

1 X.

2 **NO PRIOR REQUEST**

3 30. No previous request for the relief sought herein has been made to this Court or any
4 other court.

5 XI

6 **CONCLUSION**

7 WHEREFORE, the Debtors respectfully request that this Court enter an Interim Order and a
8 Final Order, substantially in the form attached hereto as Exhibit 1, granting the relief requested
9 herein and such other and further relief as may be just and proper.

10 Respectfully submitted this 4th day of February, 2019.

11 CLARK HILL PLC

12 /s/ Tracy M. O'Steen

13 Candace C. Carlyon, Esq. (SBN 2666)

14 Tracy M. O'Steen, Esq. (SBN 10949)

15 3800 Howard Hughes Parkway, Suite 500

16 Las Vegas, NV 89169

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18 Facsimile: (702) 862-8400

19 CCarlyon@ClarkHill.com

20 TOsteen@ClarkHill.com

21 *[Proposed] Counsel for Debtors*

SCHEDULE 1
LIST OF UTILITIES

DC SOLAR SOLUTIONS, INC.			
Provider	Address	Account No.	Service
AT&T	PO Box 5025 Carol Stream, IL 60197-5025	#####3474	Internet
Comcast	PO Box 34744 Seattle, WA 98124	#####9123	Internet
Network Solutions	12808 Gran Bay Parkway West Jacksonville, FL 32258	#####4846	Internet
Duke	PO Box 1004 Charlotte, NC 28201-1004	#####7025 9695	Electricity
Nevada Energy	PO Box 30150 Reno, NV 89520-3150	#####8165 #####1308 #####5372	Electricity
PG&E	Box 997300 Sacramento, CA 95899-7300	#####483-3 #####865-1 #####425-4	Electricity
Southern California Edison	PO Box 300 Rosemead, CA 91770	#-##-###-2309	Electricity
SRP	PO Box 80062 Prescott, AZ 86304-8062	###-##7-007	Electricity
AT&T	PO Box 5025 Carol Stream, IL 60197-5025	### ### #### 909 0 ### ### #### 826 0	Phone Expense
AT&T Mobility	PO Box 6463 Carol Stream, IL 60197-6463	#####6981 #####2670	Phone Expense
Cox Communications	PO Box 53262 Phoenix, AZ 85072-3262	### #### ####5603 ### #### ####7401	Phone Expense
TPX Communications	PO Box 509013 San Diego, CA 92150-9013	##8306	Phone Expense
Verizon	PO Box 660108 Dallas, TX 75266-0108	#####-#0001 #####-#0001	Phone Expense
West Unified Communications	PO Box 281866 Atlanta, GA 30384-1866	##8983	Phone Expense
Dish	Box 9406 Palatine, IL 60094-4063	#####9047 #####7838	Other
Republic Services	PO Box 78829 Phoenix, AZ 85062-8829	#-#####2112 #-#####7471 #-#####6117	Waste

BRANDY BOY PROPERTIES, LLC

Charter Communications	PO Box 790086 Saint Louis, MO 63179	####-##-###-####6334	Computer/ Internet
Cox Communications	PO Box 53248 Phoenix, AZ 85072-3249	### #####01 73	Computer/ Internet
Zalanta	PO Box 105007 Atlanta, GA 30348	####-217-1 ####225-1	Computer/ Internet
APS	PO Box 2906 Phoenix, AZ 85062-2906	#####1395	Electricity
Liberty Utilities	PO Box 80374 City of Industry, CA 91716-8374	##### 3779	Electricity
Southwest Gas	PO Box 98890 Las Vegas, NV 89193-8890	###-#####2-005 ###-#####9-005	Electricity
Zalanta	PO Box 105007 Atlanta, GA 30348	####-217-1 ####-225-1	Electricity
South Tahoe Reguse	2140 Ruth Ave, South Lake Tahoe, CA 96150	##### 7373	Waste
City of Scottsdale	PO Box 52799 Phoenix, AZ 85072-2799	#####-###3779	Water
South Tahoe PUD	1275 Meadow Crest Drive, South Lake Tahoe, CA 96150	#####-### 3779	Water

DOG BLUE PROPERTIES, LLC

Direct TV	PO Box 6550 Green Wood Village, CO 80155	#####8011	Computer/ Internet
Dish	PO Box 9406 Palatine, IL 60094-4063	#### ##### 5383	Computer/ Internet
Hughes Net	PO BOX 96874 Chicago, IL 60693-6874	#####4015	Computer/ Internet
Network Solutions	12808 Gran Bay Parkway West Jacksonville, FL 32258	#####4846	Computer/ Internet
Liberty Utilities	PO Box 80374 City of Industry, CA 91716-8374	#####-####2801	Electricity
NV Energy	6226 W Sahara Ave, Las Vegas, NV 89146	#####7778	Electricity
PG&E	Box 997300 Sacramento, CA 95899- 7300	#####564-1 #####766-3 #####380-0 #####075-2	Electricity

1	Southwest Gas	PO Box 98890 Las Vegas, NV 89193-8890	###-#####4-008 ###-#####0-002	Electricity
2	Ferrellgas	PO Box 88086 Chicago, IL 60680-1086	#####8213	
3	Republic Services	PO Box 78829 Phoenix, AZ 85062-8829	3-####-###3854 3-####-###2798 3-####-###3854 3-####-###9940 3-####-###9941 3-####-###9942	Waste
4				
5				
6	South Tahoe Refuse & Recycling	2140 Ruth Avenue South Lake Tahoe, CA 96150-4330	#####1700	Waste
7	Upper Valley Refuse & Recycling	PO Box 45091 San Francisco, CA 04145-0091	##-#####-# 1085	Waste
8	AT&T	PO Box 5025 Carol Stream, IL 60197- 5025	###-###-#### 265-2 ###-###-#### 122-0	Phone
9				
10	City of Martinez	525 Henrietta St. Martinez, CA 94553	##0529 ##0304 ##3140 ##4770	Utility
11				
12	EBMUD	PO Box 1000 Oakland, CA 94649-0001	#####9308	Water
13				
14	Napa County - Lake Berryessa	1195 3rd St., Ste B10 Napa, CA 94559	##71	Water
15	Las Vegas Valley Water	PO BOX 2921 Phoenix, AZ 85062-2921	#####010-8	Water
16	South Tahoe PUD	1275 Meadow Crest Drive, South Lake Tahoe, CA 96150-7401	#####-### 1108	Utility
17	DORA DOG PROPERTIES, LLC			
18				
19	Cox Communications	PO Box 79175 Phoenix, AZ 85062	### #####0401	Computer/ Internet
20	Iteknique	1850 Gateway Blvd Ste. 1090 Concord, CA 94520		Computer/ Internet
21	Network Solutions	12808 Gran Bay Parkway West Jacksonville, FL 32258	#####4846	Computer/ Internet
22	NV Energy	PO Box 30150 Reno, NV 89520-3150	#####2343	Electric
23	PG&E		#####407-4 #####787-4 #####841-0 #####199-4 #####292-8 #####336-0	Electric
24				
25				
26	Southwest Gas	PO Box 98890 Las Vegas, NV 89193	###-#####9-002	Electric
27	Tesla Solar	PO Box 3500 Draper, UT 84020	JB-#####84-00	Electric
28				

1	Republic Services	PO Box 78829 Phoenix, AZ 85062	#-####-###7426 #-####-###8638	Waste
2	CCWD	PO Box 1430 Suisun City, CA 94585-4430	####387-3 ####656-4	Water
3	City of Martinez	525 Henrietta Street Martinez, CA 94553	##1988 ##0653 ##0878 ##2044	Water
4	EBMUD	PO Box 1000 Oakland, CA 94649-0001	#####5206	Water
5	LVWD	PO Box 2921 Phoenix, AZ 85062	#####700-5	Water
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EXHIBIT 1

EXHIBIT 1

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UNITED STATES BANKRUPTCY COURT
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ESTABLISHING PROCEDURES FOR DETERMINING REQUESTS
FOR ADDITIONAL ADEQUATE ASSURANCE OF PAYMENT

Upon the emergency motion (the "Motion") of the Debtors for entry of an order (i)

1 prohibiting utility companies from altering, refusing, or discontinuing service to the Debtors and
2 (ii) establishing procedures for determining requests for additional adequate assurance of payment;
3 and upon consideration of the First Day Declaration; and due and sufficient notice of the Motion
4 having been given under the particular circumstances; and it appearing that no other or further
5 notice is necessary; and it appearing that the relief requested in the Motion is in the best interests of
6 the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation
7 thereon; and good and sufficient cause appearing:

8 **IT IS HEREBY ORDERED:**

- 9 1. The Motion is GRANTED on a final basis.
- 10 2. Except in accordance with the procedure set forth below, absent further order of the
11 Court, each Utility is prohibited from: (a) altering, refusing, or discontinuing service to, or
12 discriminating against the Debtors solely on the basis of the commencement of these cases or on
13 account of any unpaid invoice for services provided before the Petition Date; and (b) requiring the
14 payment of any additional deposit or other security in connection with the Utilities' continued
15 provision of utility services, including, the furnishing of internet and data service, electricity, water,
16 telephone, or any other utility, to the Debtors.
- 17 3. To provide adequate assurance of payment for future services to the Utilities, the
18 Utility must serve a written request (a "Request") to Debtors' counsel, Clark Hill PLC, 3800
19 Howard Hughes Parkway, Suite 500 Las Vegas, NV 89169 (Attn: Candace C. Carlyon) setting
20 forth the location for which utility services is provided, the account number(s) for such location(s),
21 the outstanding balance of each account, and an explanation as to why adequate assurance of
22 payment is necessary. The Request must be actually received by Debtor's counsel within thirty
23 (30) days of the date of the notice of entry of an order granting the relief requested in the Motion
24 (the "Request Deadline").
- 25 4. Without further order of the Court, the Debtors may enter into agreements granting
26 additional adequate assurance to a Utility serving a Request if the Debtors determine in their
27 discretion that the Request is reasonable.
- 28

1 5. If the Debtors believe that a Request is unreasonable, the Debtors, within thirty (30)
2 days after the Request Deadline, shall file a motion pursuant to section 366(c)(2) of the Bankruptcy
3 Code (a “Determination Motion”), seeking determination from the Court that the consideration
4 offered by the Debtors, constitutes adequate assurance of payment. Pending notice and a hearing
5 on the Determination Motion or further order of the Court, the Utility that is the subject of the
6 Request may not alter, refuse, or discontinue services to the Debtors, request an additional deposit
7 or other security, nor recover or setoff against a pre-Petition Date deposit.

8 6. Any utility provider may also seek Court review of the reasonableness of a request
9 for adequate assurance of payment.

10 7. Any Utility that fails to make a Request shall be deemed to be satisfied of adequate
11 assurance of payment.

12 8. Any Utility having made a Request for adequate assurance of payment shall be
13 deemed to have adequate assurance until the Court enters a final order in connection with such a
14 Request finding that the Utility is not adequately assured of future payment, or until the Debtor and
15 such Utility otherwise resolve consensually such request for additional adequate assurance of
16 payment.

17 9. The Debtors may also supplement the list of Utilities on Schedule 1 attached to the
18 Motion, and any subsequently identified Utility set forth on a supplemental Schedule 1 will fall
19 within the scope of this Order from the date of the filing of the amended Schedule 1. Any Utility
20 not listed on Schedule 1 attached to the Motion, but subsequently identified by the Debtors, shall be
21 served with notice and a copy of this Order and be afforded thirty (30) days from the date of service
22 to request adequate assurance, if any, from the Debtors. Such a request must otherwise comply
23 with the requirements set forth above or shall be deemed an invalid adequate assurance request.

24 10. All applicable banks and other financial institutions are hereby authorized, when
25 requested by the Debtors in their sole discretion, to receive, process, honor and pay all prepetition
26 and post-petition checks, drafts and other forms of payment, including fund transfers, on account of
27 the Utility Obligations, whether such checks or other requests were submitted prior to or after the
28 Petition Date.

1 11. The Debtors' banks and other financial institutions shall rely on the direction and
2 representations of the Debtors as to which checks and fund transfers should be honored and paid
3 pursuant to this order, and any such bank shall not have any liability to any party for relying on
4 such direction and representations by the Debtors as provided for in this Order or for inadvertently
5 honoring or dishonoring any check or fund transfer.

6 12. The Debtors' banks shall, at the direction of the Debtors, receive, process, honor,
7 and pay all prepetition and post-petition checks and fund transfers on account of the Utility
8 Obligations that had not been honored and paid as of the Petition Date, provided that sufficient
9 funds are on deposit in the applicable accounts to cover such payments and any such bank shall not
10 have any liability to any party for relying on such direction by the Debtors as provided for in this
11 order or for inadvertently failing to follow such direction.

12 13. To the extent the Debtors have not yet sought to remit payment on account of the
13 Utility Obligations, the Debtors are authorized, but not directed, to issue checks or provide for other
14 means of payment of the Utility Obligations.

15 14. The Debtors shall be and hereby are authorized to issue new post-petition checks or
16 effect new post-petition fund transfers on account of the Utility Obligations to replace any
17 prepetition checks or fund transfer requests that may be dishonored or rejected.

18 15. Nothing in this Order or the Motion shall be deemed to vacate or modify any other
19 restrictions on the termination of service by a Utility Provider as provided by sections 362 and 366
20 of the Bankruptcy Code or other applicable law, and nothing herein or in the Motion shall constitute
21 a post-petition assumption or adoption of any agreement pursuant to section 365 of the Bankruptcy
22 Code, nor shall anything herein be deemed a waiver by Debtors or any other party of any right with
23 respect to the assumption or rejection of an executory contract.

24 16. The terms of this Order shall apply to only those Utility Providers served with this
25 Order, and the Debtors shall serve notice of entry of this Order and the Order on all Utility
26 Providers within two (2) business days of entry of the Order.

27 17. Pursuant to Bankruptcy Rule 6003 and because of the immediate and irreparable
28 harm to the Debtors that would be caused by disruptions to the Utility Services, this Order shall be

1 immediately effective and enforceable upon its entry. Any stay of the terms of this Order under
2 Bankruptcy Rule 6004(h) is hereby waived.

3 18. The Debtors are authorized and empowered to take all actions necessary to
4 implement the relief granted in this Order.

5 19. This Court shall retain jurisdiction with respect to all matters arising from or related
6 to the implementation, interpretation, or enforcement of this Order.

7 **IT IS SO ORDERED.**

8 Submitted by:
9 CLARK HILL PLC

Approved:
OFFICE OF THE U.S. TRUSTEE

10 /s/

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16 *[Proposed] Counsel for Debtors and*
17 *Debtors in Possession*

LR 9021 CERTIFICATION

In accordance with LR 9021, an attorney submitting this document certifies as follows (check one):

☐ The court has waived the requirement set forth in LR 9021(b)(1).

☐ No party appeared at the hearing or filed an objection to the motion.

☐ I have delivered a copy of this proposed order to all attorneys who appeared at the hearing and opposed the relief, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

Jared A. Day -

☐ I certify that this is a case under chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

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